**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA HOMEOWNERS’ PROTECTION ACT” BY ADDING CHAPTER 55 TO TITLE 27, TO DEFINE NECESSARY TERMS, TO PROVIDE FOR THE APPLICABILITY OF THE CHAPTER AND EXEMPTIONS, TO PROVIDE RIGHTS OF PROPERTY OWNERS CONCERNING HOMEOWNERS’ ASSOCIATIONS, AND TO PROVIDE OBLIGATIONS OF HOMEOWNERS’ ASSOCIATIONS AND RELATED RESTRICTIONS; AND TO AMEND SECTION 27‑50‑40, AS AMENDED, RELATING TO THE RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT, SO AS TO REQUIRE THAT THE STATEMENT INCLUDES INFORMATION ABOUT ANY REQUIREMENT OF A PURCHASER TO BECOME A MEMBER OF ONE OR MORE ASSOCIATIONS, RELATED MANDATORY FEES AND ASSESSMENTS, THE MANNER IN WHICH THESE FEES AND ASSESSMENTS MAY BE CHANGED, AND THE POSSIBLE CONSEQUENCES FOR FAILING TO PAY THESE FEES AND ASSESSMENTS, AND TO REQUIRE THE REAL ESTATE COMMISSION BIENNIALLY TO REVIEW AND REVISE THESE DISCLOSURE STATEMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 55

South Carolina Homeowners’ Protection Act

Section 27‑55‑110. As used in this chapter:

(1) ‘Association’ means an incorporated entity with:

(a) the responsibility to manage and maintain a planned community or horizontal property regime; and

(b) voting membership of persons owning separate lots or units who are required by the governing documents to pay assessments to the association;

(2) ‘Board’ means the body, regardless of name, designated in the governing documents to act on behalf of the association.

(3) ‘Governing documents’ mean any documents:

(a) establishing the association and governing its management or operation;

(b) providing for the duties and obligations among the board, the association, and the property owners;

(c) creating or imposing assessments, fees, or fines by the board or the association on the property owners; and

(d) including, but not limited to, the master deed or master lease, restrictive covenants, declaration, articles of incorporation, bylaws, rules and regulations, and any amendments.

(4) ‘Property owner’ means a voting member of the association or the voting member’s tenant or designee.

Section 27‑55‑120. (A) The provisions of this chapter do not apply to an association that is:

(1) voluntary or entered into by individual agreement that does not pass with the sale of the property and is not required by the deed, covenants, or restrictions upon property; or

(2) a vacation time sharing plan organized and subject only to the provisions of Title 27, Chapter 32.

(B) Nothing in this chapter requires that an association be administered by a professional manager or management company or prohibit self‑management by the members of the association.

Section 27‑55‑130. (A) A property owner must be informed in the disclosure statement required by Section 27‑50‑40, if he is required to be a member of one or more associations when he purchases his property.

(B) A property owner must receive in the disclosure statement required by Section 27‑50‑40, a list of any fees or assessments that he is required to pay as a member of the association.

(C) A property owner must be informed in the disclosure statement required by Section 27‑50‑40, that the assessments of subsection (B) may be subject to change based upon the association’s governing documents.

Section 27‑55‑140. (A) A property owner may inspect, review, and have copies made of any governing documents. An association may charge a reasonable fee for providing copies of any records under this subsection and for supervising the property owner’s inspection. A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission, if available, upon request by the property owner. An association is not obligated to synthesize information in the governing documents.

(B) Within thirty days after a change is made in the governing documents, the board must have a copy of the change prepared in writing and hand‑delivered or sent prepaid by United States mail to the mailing address designated in writing by each property owner.

Section 27‑55‑150. A property owner is entitled to:

(1) participate in at least one meeting annually each calendar year;

(2) receive:

(a) notice of a meeting at least ten days prior to the meeting;

(b) notice of the general purpose of any meeting; and

(c) the names, addresses, and contact information for all candidates or members of the board of directors if a meeting is for the election or removal of members of the board of directors.

Section 27‑55‑160. An association must provide a fair, reasonable, and expeditious procedure for resolving a dispute between a property owner and the association that provides for:

(1) the property owner’s right to be heard; and

(2) the board’s final written determination concerning the dispute to be delivered promptly to the property owner.

Section 27‑55‑170. (A) A homeowners’ association shall not charge or attempt to collect an assessment or fine from a member that is not set forth in the governing documents.

(B) The association’s governing documents must prescribe the manner in which expenses are shared and specify the member’s proportional share for annual assessments and special assessments. An association may not charge a member an annual assessment that is more than twenty percent greater than the previous year’s assessments without the approval of two‑thirds of the members of the association.

(C) An association may impose a charge for the late payment of assessments. A payment by a member is considered late if it is unpaid thirty or more days after its due date, unless a longer period is permitted in the governing documents. A charge for the late payment of assessments is limited to the greater of fifteen dollars or ten percent of the assessment.

Section 27‑55‑180. (A) An association may not suspend privileges or services provided by the association during a period that assessments or other amounts due and owing in relation to the assessment remain unpaid for a period of thirty days after the member received notice of the unpaid amount and received an opportunity to be heard. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) a statement of any amount the association claims is due;

(2) a description of how the homeowner may remedy the situation;

(3) a date and time for the member’s hearing before the adjudicatory panel;

(4) information on the availability of nonbinding mediation through the department; and

(5) the department’s current address, telephone numbers, and website address.

(B) Before a homeowners’ association may file suit or take other action against a member homeowner for a violation of governing documents other than failure to pay an assessment, the association must, in addition to compliance with other law and the governing documents, provide notice and opportunity for a hearing. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) the specific alleged violation; and

(2) a date, time, and place for the member’s hearing before the homeowners’ association’s adjudicatory panel.

Section 27‑55‑190. (A) Any right or obligation declared by this chapter is enforceable by a civil action.

(B) An aggrieved party may recover appropriate damages for a violation of this chapter.

(C) An aggrieved party has a duty to mitigate damages in an action for a violation of this chapter.

(D) For any action brought pursuant to this chapter, the court may award costs and attorney’s fees to the prevailing party.”

SECTION 2. Section 27‑50‑40 of the 1976 Code is amended to read:

“Section 27‑50‑40. (A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

(1) the water supply and sanitary sewage disposal system;

(2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;

(3) the plumbing, electrical, heating, cooling, and other mechanical systems;

(4) present infestation of wood‑destroying insects or organisms or past infestation, the damage from which has not been repaired;

(5) the zoning laws, restrictive covenants, building codes, and other ~~land‑ use~~ land‑use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;

(6) presence of lead‑based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; ~~or~~

(7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases~~.~~;

(8) existence of a meter conservation charge, as permitted by Section 58‑37‑50, that applies to electricity or natural gas service to the property~~.~~; or

(9) a requirement that by purchasing the real property, the purchaser:

(a) must become a member of one or more associations; and

(b) must pay the association or association fees, assessments, or both, along with a list of these fees and assessments, notice that these fees and assessments are subject to change based upon the association’s governing documents, and notice that the purchaser may be subject to a foreclosure action if the assessments are not paid.

(B) The disclosure statement must give the owner the option to indicate that the owner has actual knowledge of the specified characteristics or conditions, or that the owner is making no representations as to any characteristic or condition.

(C) The rights of the parties to a real estate contract in connection with conditions of the property of which the owner has no actual or constructive knowledge are not affected by this article.

(D) The South Carolina Real Estate Commission shall review and revise the disclosure statement issued in compliance with this section beginning two years from the effective date of this act and biennially thereafter.”

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect July 1, 2015.

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